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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,602	03/17/2004	Taketo Itoh	0445-0348PUS1	4176
2292	7590	11/14/2005	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10/801,602

EXAMINER
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ART UNIT	PAPER
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20051107

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

<p align="center"><b>Office Action Summary</b></p>	<p>Application No.</p> <p align="center">10/801,602</p>	<p>Applicant(s)</p> <p align="center">ITOH ET AL.</p>	
	<p>Examiner</p> <p align="center">Laura C. Hill</p>	<p>Art Unit</p> <p align="center">3761</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-3 under 103(a) over Watanabe et al. '649 in view of Okuda '140 and claims 4-5 under 103(a) over Watanabe et al. '649 in view of Okuda '140, and in further view of St. Louis et al. '433 have been considered but are moot in view of the new ground(s) of rejection of claims 1-8 in view of Okuda (WO 00/53140A1).

### ***Allowable Subject Matter Withdrawn***

2. The indicated allowability of claims 6-8 is withdrawn in view of the newly discovered reference(s) to Okuda '140. Rejections based on the newly cited reference(s) follow.

### ***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Disposable Diaper with Standing Gathers for Easy Article Application in a Standing Position.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-8 rejected under 35 U.S.C. 103(a) as being unpatentable over Okuda et al. (WO 00/53140A1; herein 'Okuda'). Regarding claims 1-2 Okuda discloses disposable diaper 1 including absorbent core 4 with free end region 64 having a larger stress in the crotch portion of the wearer so that the standing property of the parallel spaced upstanding guard/standing gather 6 improves the fit to prevent leakage caused by crossing over of upstanding guard/standing gather 6 (page 7, ll. 25-29, figure 4), fastening tape/band fastening member 11 on each side edge of waistband (page 3, ll. 5-7, figure 1), stress of the upstanding guard elastic member 64 disposed at the longitudinal free edge end/high stiffness region 63 of 10-1000gf and preferably greater by from 5-500 gf than that of all the remaining upstanding guard elastic members 64 between laterally spaced low stiffness regions ['low stiffness regions' are considered to be any region outside of high stiffness region 63] (page 14, ll. 10-12 and fig 1). Okuda further discloses fixed elastic members 64a-64d with a stress of 5-50cN in a 100% stretched condition/fixed extension ratio (page 4, ll. 9-10, page 5, ll. 13-15). Okuda does not expressly disclose a tensile load required to extend standing gathers, rate of increase, or stiffness region width values. Tensile load is a result effective variable since it is at least a result of the material used for the standing gathers. Rate of increase is a result effective variable since it is at least a result of the amount of tensile load applied. Stiffness region width is a result effective variable since it is at least dependent on the overall diaper size. It would have been obvious to one having ordinary skill in the art at

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the time the invention was made to modify Okuda with tensile load, rate of increase, and stiffness region width values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 3 Okudo discloses low stiffness regions to be any regions of any shape located outside of high stiffness region 63 (figure 1).

Regarding claims 4-8 Okudo does not expressly disclose the crotch portion width, ratio of distances between opposite fixed gather ends and opposite elastic members ( $W1/W2$ ), distance between fixed end of standing gathers on each side of diaper ( $W3$ ) or standing gathers width ( $W4$ ) values. Crotch portion width and aforementioned ratios are result-effective variables since they are a result of the overall article size, types of materials used in standing gathers, etc. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Okuda with crotch portion width and ratio values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

